

1 CARI K. DAWSON (GA SBN 213490)  
2 Email: cari.dawson@alston.com  
3 **ALSTON + BIRD LLP**  
4 1201 West Peachtree Street  
5 Atlanta, GA 30309  
6 Telephone: (404) 881-7766  
7 Facsimile: (404) 253-8567

8 LISA GILFORD (CA SBN 171641)  
9 Email: lisa.gilford@alston.com  
10 **ALSTON + BIRD LLP**  
11 333 South Hope Street, 16<sup>th</sup> Floor  
12 Los Angeles, CA 90071  
13 Telephone: (213) 576-1000  
14 Facsimile: (213) 576-1100

15 *Lead Defense Counsel for Economic*  
16 *Loss Cases*

ANNA S. McLEAN (CA SBN 142233)  
Email: amclean@sheppardmullin.com  
**SHEPPARD, MULLIN, RICHTER**  
**& HAMPTON LLP**  
Four Embarcadero Center, 17<sup>th</sup> Floor  
San Francisco, CA 94111  
Telephone: (415) 434-9100  
Facsimile: (415) 434-3947

ASHLEY E. MERLO (CA SBN 247997)  
Email: amerlo@sheppardmullin.com  
**SHEPPARD, MULLIN, RICHTER**  
**& HAMPTON LLP**  
650 Town Center Drive, 4th Floor  
Costa Mesa, CA 92626-1993  
Telephone: (714) 513-5100  
Facsimile: (714) 513-5130

*Attorneys for Toyota Motor Credit*  
*Corporation*

11  
12  
13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 IN RE: TOYOTA MOTOR CORP.  
16 UNINTENDED ACCELERATION  
17 MARKETING, SALES PRACTICES, AND  
18 PRODUCTS LIABILITY LITIGATION

19 This document relates to: THE AMENDED  
20 FOREIGN ECONOMIC LOSS MASTER  
21 CONSOLIDATED COMPLAINT

Case No.: 8:10ML2151 JVS (FMOx)

TOYOTA DEFENDANTS'  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS FOREIGN  
PLAINTIFFS' AMENDED  
COMPLAINT FOR FORUM NON  
CONVENIENS

[FILED CONCURRENTLY WITH  
NTC. OF MTN. AND MTN. TO  
DISMISS FOREIGN PLAINTIFFS'  
AMENDED COMPLAINT FOR  
FORUM NON CONVENIENS; REQ.  
FOR JUDICIAL NOTICE;  
SUPPORTING DECLARATIONS;  
AND [PROPOSED] ORDER]

Date: July 5, 2011  
Time: 1:30 p.m.  
Location: Court Room 10C  
Judicial Officer: Hon. James V. Selna

## TABLE OF CONTENTS

Preliminary Statement .....	1
Background .....	3
Argument.....	6
I. DISMISSAL IS PROPER WHERE AN ADEQUATE ALTERNATIVE FORUM EXISTS AND PRIVATE AND PUBLIC INTEREST FACTORS FAVOR THE FOREIGN FORUM.....	6
II. EACH OF Foreign Plaintiffs' HOME COUNTRIES CONSTITUTES AN ADEQUATE ALTERNATE FORUM .....	9
A. Australia is an Adequate Alternate Forum .....	11
B. China is an Adequate Alternate Forum .....	13
C. Egypt is an Adequate Alternate Forum .....	14
D. Germany is an Adequate Alternate Forum .....	16
E. Guatemala is an Adequate Alternate Forum .....	17
F. Indonesia is an Adequate Alternate Forum .....	18
G. Jamaica is an Adequate Alternate Forum .....	20
H. Malaysia is an Adequate Alternate Forum .....	21
I. Mexico is an Adequate Alternate Forum .....	22
J. The Philippines is an Adequate Alternate Forum .....	23
K. Russia is an Adequate Alternate Forum .....	24
L. South Africa is an Adequate Alternate Forum .....	25
M. Turkey is an Adequate Alternate Forum .....	27
III. THE PRIVATE AND PUBLIC INTEREST FACTORS WEIGH HEAVILY IN FAVOR OF DISMISSAL.....	28
A. All of the Private Interest Factors Favor Dismissal, as the Parties, Witnesses and Evidence are Located Abroad .....	30

1	1.	Plaintiffs, Witnesses, and Proper Defendants are Located Abroad.....	30
2	2.	California is Not Convenient to the Litigation .....	31
3	3.	Evidence is Located Abroad .....	31
4	4.	Unwilling Witnesses Cannot Be Compelled to Testify.....	32
5	5.	There Will Be Significant Costs in Bringing Witnesses to Trial.....	33
6	6.	Trial Will Be Easier and More Expeditious in Foreign Plaintiffs' Home Forums.....	33

B. Public Interest Factors Also Weigh Heavily in Favor of the Foreign Forums .....34

10	1.	Plaintiffs' Own Countries Have the Greatest Interest in the Lawsuit.....	34
11	2.	Foreign Plaintiffs' Own Courts Are Most Familiar With Their Own Laws, Which Will Apply to Foreign Plaintiffs' Claims .....	35
12	3.	This Case Would Impose a Burden on Local Courts and Factfinders.....	36
13	4.	Court Congestion Weighs in Favor of Trial Abroad in Each of Foreign Plaintiffs' Forums .....	37
14	5.	This Costly Litigation Is Unrelated to This Forum .....	38

CONCLUSION ..... 39

# **TABLE OF AUTHORITIES**

**Page(s)**

## **FEDERAL CASES**

*Aldana v. Del Monte Fresh Produce N.A., Inc.*

578 F.3d 1283 (11th Cir. 2009)..... 18

*Auxer v. Alcoa, Inc.*

No. 10-2132, 2011 WL 180034 (3d Cir. Jan. 20, 2011)..... 12

*Baumgart v. Fairchild Aircraft Corp.*

No. SA-90-CA-818, 1991 WL 487242 (W.D. Tex. Sept. 30, 1991)..... 17

*Blanco v. Banco Indus. de Venez., S.A..*

997 F.2d 974 (2d Cir. 1993)..... 15

*Contact Lumber Co. v. P.T. Moges Shipping Co., Ltd.*

918 F.2d 1446 (9th Cir. 1990)..... 24, 34

*Dabbous v. Am. Express Co.*

No. 06 Civ. 11345, 2009 WL 1403930 (S.D.N.Y. May 8, 2009)..... 15, 37

*Deirmenjian v. Deutsche Bank, A.G.*

No. 06-00774, 2006 WL 4749756 (C.D. Cal. Sept. 25, 2006)..... 10

*Delgado v. Shell Oil Co.*

890 F. Supp. 1324 (S.D. Tex. 1995)..... 24

*Dornberger v. Metro. Life Ins. Co.*

182 F.R.D. 72 (S.D.N.Y. 1998)..... 11

*Gallego v. Garcia*

No. 07CV1185, 2010 WL 2354585 (S.D. Cal. June 9, 2010)..... 23

*Gulf Oil Corp. v. Gilbert*

330 U.S. 501, 67 S. Ct. 839 (1947)..... 2, 7, 8, 34, 36

*Helog AG v. Kaman Aerospace Corp.*

228 F. Supp. 2d 91 (D. Conn. Sept. 30, 2002)..... 17

*Huang v. Advanced Battery Technologies, Inc.*

No. 09 CV 8297, 2010 WL 2143669..... 14, 34

1	<i>In re Air Crash over the Mid-Atlantic on June 1, 2009</i>	
2	No. 10-2144, -- F. Supp. 2d. --, 2010 WL 3910354 (N.D. Cal. Oct. 4, 2010) .....	30, 36
3	<i>In re Air Crash over the Taiwan Straits on May 25, 2002</i>	
4	331 F. Supp. 2d 1176 (C.D. Cal. 2004) .....	7, 30, 31, 33, 36
5	<i>In re Alcon Shareholder Litig.</i>	
6	719 F. Supp. 2d 263 (S.D.N.Y. 2010).....	10
7	<i>In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India in December,</i>	
8	1984	
9	634 F. Supp. 842 (S.D.N.Y. 1986).....	10
10	<i>Intercontinental Dictionary Series v. De Gruyter</i>	
11	822 F. Supp. 662 (C.D. Cal. 1993) .....	12
12	<i>Jayaraman v. Salomon, Inc.</i>	
13	No. 87 Civ. 2781, 1991 WL 61071 (S.D.N.Y. Apr. 5, 1991).....	22
14	<i>Kirch v. Liberty Media Corp.</i>	
15	No. 04 Civ. 667, 2006 WL 3247363 (S.D.N.Y. Nov. 8, 2006).....	16
16	<i>Lockman Found. v. Evangelical Alliance Mission</i>	
17	930 F.2d 764 (9th Cir. 1991).....	9, 10
18	<i>Loya v. Starwood Hotels &amp; Resorts Worldwide, Inc.</i>	
19	583 F.3d 656 (9th Cir. 2009).....	9, 23
20	<i>Lueck v. Sundstrand Corp.</i>	
21	236 F.3d 1137 (9th Cir. 2001).....	7, 8, 9, 28, 29, 32, 35, 36, 38
22	<i>Mastafa v. Australian Wheat Bd. Ltd.</i>	
23	No. 07 Civ. 7955, 2008 WL 4378443 (S.D.N.Y. Sept. 25, 2008).....	12
24	<i>Mercier v. Sheraton Int'l, Inc.</i>	
25	981 F.2d 1345 (1st Cir. 1992).....	27
26	<i>Morrison v. Nat'l Austl. Bank Ltd.</i>	
27	130 S. Ct. 2869 (2010).....	9
28	<i>Niv v. Hilton Hotels Corp.</i>	
	710 F. Supp. 2d 328, 2008 WL 4849334 (S.D.N.Y. 2008) .....	10, 15

1	<i>Nolan v. Boeing Co.</i>	
2	919 F.2d 1058 (5th Cir. 1990).....	37
3	<i>Overseas Media, Inc. v. Skvortsov</i>	
4	277 F. App'x 92 (2d Cir. 2008) .....	25
5	<i>Palacios v. Coca-Cola Co.</i>	
6	No. 10 Civ. 3120 --- F. Supp. 2d ----, 2010 WL 4720409 (S.D.N.Y. Nov. 19, 2010).....	9, 18
7	<i>Paolicelli v. Ford Motor Co.</i>	
8	289 F. App'x 387 (11th Cir. 2008) .....	15
9	<i>Piper Aircraft Co. v. Reyno</i>	
10	454 U.S. 235, 102 S. Ct. 252 (1981).....	7, 9, 10, 14, 30, 31, 34, 35, 37
11	<i>Proyectos Orchimex de Costa Rica S.A. v. E.I. du Pont de Nemours &amp; Co.</i>	
12	896 F. Supp. 1197 (M.D. Fla. 1995).....	21
13	<i>PT United Can Co. Ltd. v. Crown Cork &amp; Seal Co., Inc.</i>	
14	138 F.3d 65 (2d Cir. 1998).....	19
15	<i>Ruelas Aldaba v. Michelin N. Am., Inc.</i>	
16	No. C 04-5369, 2005 WL 3560587 (N.D. Cal. Dec. 29, 2005).....	23
17	<i>Rustal Tarading U.S., Inc. v. Makki</i>	
18	17 F. App'x 331 (6th Cir. 2001) .....	15
19	<i>Seales v. Panamanian Aviation Co.</i>	
20	356 F. App'x 461 (2d Cir. 2009) .....	20
21	<i>Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.</i>	
22	549 U.S. 422, 127 S. Ct. 1184 (2007).....	1, 7, 14
23	<i>Tang v. Synutra Int'l, Inc.</i>	
24	No. 09-0088, 2010 WL 1375373 (D. Md. March 29, 2010) .....	8, 14
25	<i>Thomson v. Toyota Motor Corp. Worldwide</i>	
26	545 F.3d 357 (6th Cir. 2008).....	26, 29, 30, 33, 35
27	<i>Turedi v. Coca Cola Co.</i>	
28	460 F. Supp. 2d 507 (S.D.N.Y. 2006).....	7, 8, 27
	<i>Vorbiev v. McDonnell Douglas Helicopters, Inc.</i>	
	No. C 08-05539, 2009 WL 1765675 (N.D. Cal. June 18, 2009).....	25, 37, 39

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FEDERAL RULES AND STATUTES**

Fed. R. Civ. P. 9(b)..... 1

28 U.S.C. § 1782 ..... 32



**PRELIMINARY STATEMENT**

Toyota Motor Corporation ("TMC"), Toyota Motor Sales, U.S.A., Inc. ("TMS"), Toyota Motor North America, Inc. ("TMA"), Toyota Motor Credit Corporation ("TMCC") and Toyota Motor Engineering & Manufacturing North America, Inc. ("TEMA") (collectively, "Toyota Defendants") hereby move to dismiss the class action complaint brought by foreign plaintiffs in thirteen<sup>1</sup> countries (the "Foreign Plaintiffs") on *forum non conveniens* grounds.

It must be noted at the outset that the Toyota Defendants separately moved to dismiss the ACFPC separately on foreign jurisdictional grounds on January 25, 2011 (the "Foreign Jurisdictional Issues Motions") in accordance with the court-ordered stipulation revising the briefing schedule on moving to dismiss the amended consolidated foreign plaintiffs' complaint (the "ACFPC"). (Dkt. Nos. 657, 659, 661-664.) As is set forth in detail in those motions, the ACFPC should be dismissed against all defendants because: foreign plaintiffs fail to plead any connection between their alleged damages and the Toyota Defendants' alleged action under, respectively, *Iqbal* and *Twombly* standards and Fed. R. Civ. P. 9(b); foreign plaintiffs' statutory causes of action do not extend to foreigners' claims for damages outside the United States; foreign plaintiffs failed to join necessary foreign defendants not subject to US courts' jurisdiction; and foreign plaintiffs improperly joined U.S. Toyota Defendants in an attempt to manufacture diversity jurisdiction.

The Toyota Defendants respectfully suggest that the Court first consider and decide the issues raised in the Foreign Jurisdictional Issues Motions. *Only* if the Court determines, after analysis of those motions, that some portion of Foreign Plaintiffs' claim survives, does the Court need to consider this motion. *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 434, 127 S. Ct. 1184, 1193 (2007)

---

<sup>1</sup> As plaintiffs have voluntarily dismissed the sole class representative for Peru, Augusto Panez, from this complaint (Dkt. No. 774), this motion to dismiss deals solely with the thirteen countries still remaining in foreign plaintiffs' case.



1 (“[O]nce a court determines that jurisdiction is lacking, it can proceed no further and  
2 must dismiss the case on that account. In that scenario ‘*forum non conveniens* can  
3 never apply.’”) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 504, 67 S. Ct. 839  
4 (1947)).

5 To the extent that any portion of the ACFPC survives the Foreign Jurisdictional  
6 Issues Motions, the ACFPC should nevertheless be dismissed in favor of the courts in  
7 the countries where the Foreign Plaintiffs reside. Foreign Plaintiffs are engaged in  
8 blatant forum shopping: none of them are located in the United States, and they are  
9 trying to get a free ride off of domestic defendants’ litigation and discovery and to  
10 drastically expand the litigation to include vehicles with little or no connection to the  
11 United States. If any Toyota customers outside the United States allege that there are  
12 problems with their vehicles, their judicial recourse is through their own countries’  
13 legal systems to the entities *that actually have a connection with those vehicles*.  
14 Indeed, dozens of plaintiffs in foreign jurisdictions *have* brought claims in their own  
15 countries -- including one of the Foreign Plaintiffs named here -- and the Foreign  
16 Plaintiffs should not be allowed to clog the U.S. legal system with cases unrelated to  
17 the United States in a misguided quest for opt-out class actions and contingency fees.

18 Each of the thirteen countries in which Foreign Plaintiffs reside will permit  
19 litigation of the subject matter of the dispute and offer remedies for the wrongs the  
20 Foreign Plaintiff allege (in the unlikely event they can prove them), and that is enough  
21 to qualify them as adequate alternative forums. In addition, if this Court dismisses  
22 this litigation on the basis of *forum non conveniens*, the Toyota Defendants have  
23 agreed to safeguards required by U.S. courts to ensure that the adequate alternate  
24 forums will be available to these Foreign Plaintiffs. Declaration of Jerry Koyanagi  
25 (“Koyanagi Decl.”), ¶6; Declaration of Kojiro Tanaka (“Tanaka Decl.”), ¶6;  
26 Declaration of Patrick Nepute (“Nepute Decl.”), ¶2; Declaration of Kevin Ro (“Ro  
27 Decl.”), ¶6; Declaration of David Pelliccioni (“Pelliccioni Decl.”), ¶2.  
28

1       Once this determination is made, the Court must weigh private and public  
2 factors such as location of parties, witnesses, physical evidence, and country interests  
3 to determine whether the balance of the factors favors the foreign forum. Here, each  
4 and every single *forum non conveniens* factor favors dismissal of this case. Indeed,  
5 keeping this case in the United States would lead to the absurd and impossible  
6 spectacle of a U.S. factfinder weighing: (1) testimony of forty-one Foreign Plaintiffs;  
7 (2) expert witnesses' testimony on the comparative resale values of vehicles in each of  
8 thirteen foreign countries; (3) evidence of differences in foreign vehicle design and  
9 manufacture; and (4) documents translated from a dozen languages of each of the  
10 Foreign Plaintiffs' jurisdictions and potentially from additional foreign jurisdictions --  
11 all in order to apply the laws of each of Foreign Plaintiffs' countries which govern  
12 Foreign Plaintiffs' allegations. To the extent that any of Foreign Plaintiffs' claims  
13 survive Defendants' Foreign Jurisdictional Issues Motions, these claims still do not  
14 belong in the United States.

### 15                                   **BACKGROUND**

16       As the Toyota Defendants explained in greater detail in their Foreign  
17 Jurisdictional Issues Motions, the vehicles at issue in the ACFPC were manufactured,  
18 advertised, purchased, driven, maintained, and/or repaired abroad by foreign plaintiffs  
19 and have no real connection to the United States.

20       Toyotas are manufactured in at least 26 countries worldwide, including in the  
21 Foreign Plaintiffs' jurisdictions of China, Mexico, Germany, South Africa, Turkey,  
22 Indonesia, and the Philippines. Dkt. No. 285-2. The VIN numbers that Foreign  
23 Plaintiffs list in the ACFPC further demonstrate that Foreign Plaintiffs' automobiles  
24 are manufactured in a host of countries outside of the United States. Declaration of  
25 Lisa Gilford filed herewith ("Gilford Decl.") Exhs. A and B. Indeed, the Auris  
26 models that three of the Foreign Plaintiffs purchased are not designed, manufactured  
27 or sold in the United States at all. Dkt. No. 285-2. Neither are the AYGO, iQ, Verso,  
28 and Radford. *Id.* Similarly, Foreign Plaintiffs include vague and generic allegations

1 that each of them viewed advertisements, *inter alia*, on the television, on billboards,  
2 and in brochures at their respective dealerships. ACFPC ¶¶ 36-78. None of them  
3 alleges they viewed advertisements anywhere but their home countries. *Id.*

4 Moreover, Foreign Plaintiffs admit that Toyota Motor Europe acted differently  
5 than did U.S. Toyota Defendants by alleging that Toyota Motor Europe made a  
6 manufacturing change and issued an accelerator pedal notification to Toyota  
7 distributors in dozens of countries -- including this litigation's subject countries of  
8 Germany, Russia, and Turkey -- months before such actions took place in the United  
9 States. ACFPC ¶¶ 220 and 334. With those few paragraphs, Foreign Plaintiffs  
10 acknowledge that other Toyota entities exist around the world and promulgate and  
11 implement different actions affecting them and their vehicles.

12 In short, Foreign Plaintiffs' claims involve the purported marketing, purchase,  
13 sale or lease of vehicles, and alleged harm stemming from those transactions, that  
14 occurred entirely outside the U.S. The limited information that Foreign Plaintiffs have  
15 provided pursuant to this Court's order of October 29, 2010, requiring fact sheets  
16 (Dkt. No. 433) further demonstrates that witnesses and documents relating to their  
17 transactions and claimed damages are all located overseas. For example:

18 **Named plaintiff Catherine De Bruin** is a South African citizen who lives in  
19 Kempton Park, South Africa and purchased her vehicle in Fourways, South Africa.  
20 She purchased a used Corolla with a VIN beginning with "AH" indicating it was  
21 manufactured in South Africa. She allegedly experienced UA in South Africa on two  
22 occasions and states that the UA was witnessed by her daughter, C. van der Merwe,  
23 who resides in South Africa. She also states that she mentioned the UA incidents to  
24 her dealership, "Autopedigree Fourways," when her car was serviced. She only  
25 identifies and attaches one document relating to the purchase, warranty, maintenance  
26 and servicing of her vehicle: a one-page warranty document issued by Regent  
27 Insurance Company Limited. ACFPC ¶ 58; Gilford Decl., Exhs. B, C.

1       **Named Plaintiff Susan Ong** is a citizen of the Philippines and a resident of  
2 Caroline Springs, Australia, and she purchased her vehicle in Victoria, Australia. In  
3 Australia, vehicles are driven on the left side of the road and steering wheels are on  
4 the right side of the car. She purchased a Yaris with a VIN beginning with "JT"  
5 indicating that it was manufactured in Japan. Ms. Ong alleges that she experienced  
6 UA three times, but only describes one incident in which she alleges her husband  
7 experienced UA when he was driving alone. She also says that she made statements  
8 regarding the event to a friend, Jose Herrera. Ms. Ong identifies many documents  
9 relating to the purchase, warranty, maintenance and servicing of her vehicle, including  
10 warranty and service booklets and service invoices and receipts, but she only provided  
11 five pieces of paper, most of which are cover pages for booklets and one of which  
12 references implied warranties under the "Trade Practices Act 1974." ACFPC ¶ 78;  
13 Gilford Decl., Exhs. B, F.

14       **Named plaintiff Hatice Hulya Yigit** is a Turkish citizen who lives in Istanbul,  
15 Turkey and purchased her vehicle there. She purchased an Auris with a VIN  
16 beginning with "NM" indicating it was manufactured in Turkey. In fact, Toyota does  
17 not manufacture, distribute or sell any Auris model in the United States. Ms. Yigit  
18 states in her fact sheet that she experienced UA in Gebze, Turkey which included a  
19 collision, emergency response, injury and property damage. She states that she made  
20 written or oral statements about the UA to an insurance carrier, car dealer, mechanic  
21 or other person, but does not identify any such persons. Ms. Yigit states in her fact  
22 sheet that she has multiple documents relating to the purchase, warranty, maintenance  
23 and servicing of her vehicle, but she did not provide those documents (nor any police  
24 or insurance documents regarding her alleged UA event), as requested by the fact  
25 sheet. ACFPC ¶55; Dkt. No. 285-2; Gilford Decl., Exhs. B, G.

26       **Named plaintiff Natalia Komarova** is a Russian citizen who lives in Ufa,  
27 Russia and purchased her vehicle in Ufa, Russia. She purchased a Yaris with a VIN  
28 beginning with "VN" indicating it was manufactured in France. She allegedly

1 experienced UA in Ufa, Russia, and names four witnesses to the incident: two  
2 acquaintances who live in Ufa, Russia; a second cousin who lives in Ufa, Russia, and  
3 a sister who lives in Almaty, Kazakhstan. Ms. Komarova also alleges in her fact sheet  
4 that she made statements regarding the UA incident to the dealership in Ufa on two  
5 occasions, and in her complaint, she alleges that the dealership refused to repair her  
6 vehicle. She also states that she communicated with the Russian "State traffic  
7 inspectorate" in June 2010. She states that she has not filed any other litigation  
8 regarding her vehicle, but public documents available on the internet site of the local  
9 courts in Ufa Russia show that she filed a consumer protection complaint in July 2010  
10 and that her litigation is still ongoing. ACFPC ¶ 75; Gilford Decl., Exhs. B, D, E.

11 Ms. Komarova is far from the only foreign plaintiff to sue Toyota in his or her  
12 own country: indeed, as of May 2010, seventy-three unintended acceleration legal  
13 proceedings had been brought against Toyota entities in fifteen separate foreign  
14 countries, namely: (1) Austria; (2) Brazil; (3) Canada; (4) Germany; (5) Iceland; (6)  
15 Ireland; (7) Israel; (8) Italy; (9) Kuwait; (10) Morocco; (11) Portugal; (12) South  
16 Korea; (13) Taiwan; (14) Turkey; and (15) the United Kingdom. Of these countries,  
17 Germany and Turkey are listed as residences of named plaintiffs in the ACFPC.  
18 Gilford Decl., Exhs. H, I. It is clear that dozens of foreign plaintiffs -- including Ms.  
19 Komarova -- realize that their own countries are suitable and preferable venues for  
20 their complaints. Application of U.S. *forum non conveniens* doctrine will lead this  
21 Court to the same conclusion.

## 22 ARGUMENT

### 23 I. DISMISSAL IS PROPER WHERE AN ADEQUATE ALTERNATIVE 24 FORUM EXISTS AND PRIVATE AND PUBLIC INTEREST FACTORS 25 FAVOR THE FOREIGN FORUM

26 As the Supreme Court stated in 2007, synthesizing decades of its own  
27 precedent:  
28



1 “A federal court has discretion to dismiss a case on the ground of  
2 *forum non conveniens* ‘when an alternative forum has jurisdiction to hear  
3 [the] case, and ... trial in the chosen forum would establish ...  
4 oppressiveness and vexation to a defendant ... out of all proportion to  
5 plaintiff's convenience, or ... the chosen forum [is] inappropriate because  
6 of considerations affecting the court's own administrative and legal  
7 problems.’”

8 *Sinochem*, 549 U.S. at 429, 127 S. Ct. at 1190. (citations omitted.) *See also Lueck v.*  
9 *Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001). This is because there is “‘a  
10 local interest in having localized controversies decided at home.’” *Piper Aircraft Co.*  
11 *v. Reyno*, 454 U.S. 235, 260, 102 S. Ct. 252, 268 (1981) (quoting *Gilbert*, 330 U.S. at  
12 509, 67 S. Ct. at 843).

13 In dismissing an action on *forum non conveniens* grounds the court must  
14 examine: (1) whether an adequate alternative forum exists, and (2) whether the  
15 balance of private and public interest factors favors dismissal. *Id.*; *In re Air Crash*  
16 *over the Taiwan Straits on May 25, 2002*, 331 F. Supp. 2d 1176 (C.D. Cal. 2004).

17 “[T]he adequate alternative forum requirement of the *forum non conveniens*  
18 doctrine is ordinarily satisfied if (1) the other forum is available because the defendant  
19 is amenable to service of process there, and (2) the forum permits litigation of the  
20 subject matter of the dispute and offers remedies for the wrongs the plaintiff alleges,  
21 even if the causes of action and relief provided there are not identical in every respect  
22 to the claims the plaintiff demands or redress he seeks in his chosen forum.” *Turedi v.*  
23 *Coca Cola Co.*, 460 F. Supp. 2d 507, 523 (S.D.N.Y. 2006) (holding that Turkey was  
24 adequate alternative forum), *aff'd*, 343 F. App'x 623 (2d Cir. 2009); *see also Taiwan*  
25 *Straits Air Crash*, 331 F. Supp. 2d at 1181 (holding that Taiwan was an adequate  
26 alternative forum).

27 An adequate alternative forum will be held to be “available” where the  
28 defendant agrees to submit to personal jurisdiction in the foreign forum and will waive

1 applicable statute of limitations defenses in the foreign forum. *Lueck*, 236 F.3d at  
2 1143; *Tang v. Synutra Int'l, Inc.*, No. 09-0088, 2010 WL 1375373, at \*5 (D. Md.  
3 March 29, 2010). In addition, some courts take into account whether an alternative  
4 court's judgment can be readily enforced. *See, e.g., Turedi*, 460 F. Supp. 2d at 529  
5 (conditioning dismissal of action on grounds of *forum non conveniens* on, *inter alia*,  
6 defendants' agreement to satisfy any final judgment rendered by the foreign forum in  
7 connection with subject matter of litigation). In this instance, if this Court dismisses  
8 this action based on *forum non conveniens* grounds, the Toyota Defendants have  
9 already agreed to accept service of process in each of the thirteen relevant foreign  
10 forums, to submit to the personal jurisdiction of each foreign forum, and to comply  
11 with full and final judgments in each of the foreign forums. Koyanagi Decl. ¶6;  
12 Tanaka Decl. ¶6; Nepute Decl. ¶2; Ro Decl. ¶6; Pelliccioni Decl. ¶2. They have also  
13 agreed to waive statute of limitations defenses that they would have against Foreign  
14 Plaintiffs provided that Foreign Plaintiffs commence their foreign UA litigation within  
15 120 days of a *forum non conveniens* dismissal. *Id.* These representations are  
16 sufficient to make each of the foreign forums available to Foreign Plaintiffs.

17 As Toyota Defendants establish in Section II below, it is clear that each of  
18 Foreign Plaintiffs' countries is an adequate alternative forum for resolving their  
19 respective claims against the Toyota Defendants. The only remaining inquiry is  
20 whether a balancing of the public and private interest factors articulated in *Gulf Oil*  
21 *Corp. v. Gilbert* weighs in favor of dismissal. "[I]f the balance of conveniences  
22 suggests that trial in the chosen forum would be unnecessarily burdensome for the  
23 defendant or the court, dismissal is proper." *Lueck*, 236 F.3d at 1145. Section III  
24 below sets forth the multiple private and public interest reasons that maintaining this  
25 litigation in the United States would be unnecessarily burdensome for plaintiffs as  
26 well as defendants and for the Court, and demonstrates that this litigation should be  
27 dismissed in favor of each of each of the alternate forums, which are far better suited  
28 to hear Foreign Plaintiffs' claims.



1     **II. EACH OF FOREIGN PLAINTIFFS' HOME COUNTRIES**  
2     **CONSTITUTES AN ADEQUATE ALTERNATE FORUM**

3     A foreign forum is adequate “unless it offers no practical remedy for the  
4 plaintiff’s complained of wrong.” *Lueck*, 236 F.3d at 1144. In ruling on a motion to  
5 dismiss on the basis of forum non conveniens, this Court is “not required to ask  
6 whether Plaintiffs could bring this lawsuit” in the applicable alternative forum, but  
7 rather whether the forum “offers a remedy for their losses.” *Id.* at 1143. Indeed, “[i]t  
8 is only in rare circumstances...where the remedy provided by the alternative  
9 forum...is so clearly inadequate or unsatisfactory, that it is no remedy at all, that this  
10 requirement is not met.” *Id.*

11     The availability of an adequate alternate forum is not dependent upon “the  
12 existence of the identical cause of action” in that forum – the inquiry is concerned  
13 with whether the foreign court is capable of litigation “the essential subject matter” of  
14 the dispute. *Palacios v. Coca-Cola Co.*, No. 10 Civ. 3120 --- F. Supp. 2d ----, 2010  
15 WL 4720409, at \*8 (S.D.N.Y. Nov. 19, 2010). For example “the inability to assert a  
16 RICO claim in a foreign forum does not preclude a forum non conveniens dismissal.”  
17 *Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 769 (9th Cir. 1991).

18     A forum will also not be deemed inadequate if it would offer plaintiffs a  
19 different or lesser remedy than they could expect to receive in the U.S. court system.  
20 *Piper Aircraft*, 454 U.S. at 250 (1981); *Loya v. Starwood Hotels & Resorts*  
21 *Worldwide, Inc.*, 583 F.3d 656 (9th Cir. 2009); *Lueck*, 236 F.3d at 1143. Indeed, since  
22 plaintiffs ordinarily attempt to bring suit in the forum that offers them what they  
23 perceive as the most favorable outcome, taking differences in the potential outcome  
24 into account would gut the *forum non conveniens* analysis. *Piper Aircraft*, 454 U.S. at  
25 250. The Supreme Court has also recently disapproved of the notion that the U.S.  
26 should be “the Shangri-La of class-action litigation for lawyers representing those  
27 allegedly cheated” overseas. *Morrison v. Nat’l Austl. Bank Ltd.*, 130 S. Ct. 2869,  
28 2886 (2010). Differences between the two legal systems, even if they inure to

1 plaintiffs' detriment, do not suggest that" a foreign forum is inadequate, and  
2 "[d]ifference is not to be equated with deficiency." *In re Union Carbide Corp. Gas*  
3 *Plant Disaster at Bhopal, India in December, 1984*, 634 F. Supp. 842, 852 (S.D.N.Y.  
4 1986), *aff'd as modified*, 809 F.2d 195 (2d Cir. 1987). Only if "the remedy provided  
5 by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy  
6 at all" should the difference in law weigh against dismissal. *Piper Aircraft*, 454 U.S.  
7 at 254.

8 In addition, differences between legal systems and legal mechanisms, such as  
9 pre-trial discovery, the availability of jury trials, and the nature of appellate review  
10 will not render a forum inadequate. *Lockman Found.* 930 F.2d at 768 (9th Cir. 1991).  
11 In addition, "[c]ourts must be cautious before finding incompetence or corruption by  
12 other nation's judicial systems." *Niv v. Hilton Hotels Corp.*, 710 F. Supp. 2d 328,  
13 2008 WL 4849334, at \*7 (S.D.N.Y. 2008) (finding that Egypt was adequate alternate  
14 forum and dismissing complaint on grounds of forum non conveniens).

15 In a hearing held on May 13, 2010, this Court asked counsel for Foreign  
16 Plaintiffs "why would [foreign] plaintiffs be suing in the United States when there are  
17 fully developed judicial systems in those countries?" Counsel's response provided  
18 three rationales: (1) "in the countries that I have mentioned to you, they do not have  
19 class actions"; (2) "[t]hey do not have the theory of liability"; and (3) "the product that  
20 was defective was manufactured here in the USA." Gilford Decl., Exh. J. The first  
21 rationale, while it suggests forum shopping, is otherwise meaningless to the *forum non*  
22 *conveniens* analysis, because an alternative forum without a class action mechanism is  
23 still adequate for *forum non conveniens* purposes. *See, e.g., In re Alcon Shareholder*  
24 *Litig.*, 719 F. Supp. 2d 263, 273 (S.D.N.Y. 2010); *Deirmenjian v. Deutsche Bank,*  
25 *A.G.*, No. 06-00774, 2006 WL 4749756, at \*8 (C.D. Cal. Sept. 25, 2006). The second  
26 rationale is incorrect: as is set forth below on a country by country basis, each of the  
27 foreign forums provide theories of liability for claims such as those asserted by  
28 Foreign Plaintiffs, and there is no requirement that those theories of liability must be

1 "the" theory of liability asserted in the ACFPC. The third rationale, as has already  
2 been explained in the Foreign Jurisdictional Issues Motions, is neither determinative  
3 nor persuasive as to Foreign Plaintiffs who purchased, drove, and repaired their  
4 vehicles in their own countries, particularly where their own VIN numbers prove that  
5 their vehicles were manufactured outside of the United States.

6 Foreign Plaintiffs allege that the members of the purported class reside in  
7 thirteen different countries: Australia, China, Egypt, Germany, Guatemala, Indonesia,  
8 Jamaica, Malaysia, Mexico, the Philippines, Russia, South Africa and Turkey.<sup>2</sup>  
9 (ACFPC ¶ 297.) As is described in detail below, and as has been determined by  
10 multiple courts nationwide, each of these countries possesses an independent judiciary  
11 and upholds the rule of law, provides plaintiffs with a remedy, and therefore  
12 constitutes an adequate alternate forum.

13 **A. Australia is an Adequate Alternate Forum**

14 Foreign Plaintiff Susan Ong is a citizen of the Philippines and a resident of  
15 Australia. Australia has a system of courts exercising state and federal jurisdiction in  
16 civil matters, and it appears that the Australian Foreign Plaintiff's claims would be  
17 within the jurisdiction of either the Australian state or federal court. (Declaration of  
18 Christopher John Blanden in Support of Toyota Defendants' Motion to Dismiss  
19 Foreign Plaintiffs' Amended Complaint (the "Blanden Decl.") ¶¶ 12, 25.) The  
20 Australian legal system is comprised of both trial and appellate courts (as well as the  
21 High Court of Australia within the federal court system). (*Id.* ¶¶ 13-19.)

22 Australian law recognizes a tort of negligence, and permits product-related  
23 claims and claims for negligent misrepresentation. (*Id.* ¶¶ 47, 49, 51.) Australian  
24 jurisprudence includes decisions against automotive manufacturers in product-related  
25

26  
27 <sup>2</sup> As stated in footnote 1 above, the sole named plaintiff from Peru has been dismissed  
28 from the case. Foreign named plaintiffs only have standing to represent plaintiffs  
residing in their own countries. *Dornberger v. Metro. Life Ins. Co.*, 182 F.R.D. 72, 82  
(S.D.N.Y. 1998). Because it no longer has a class representative, Peru is no longer at  
issue in this litigation.

1 claims. (*Id.* ¶ 47.) Australia has also enacted consumer protection laws pertaining to  
2 misrepresentation, breach of (implied) warranties, non-merchantable quality,  
3 misleading or deceptive conduct, and product liability; a number of remedies,  
4 including injunctions and damages, are available for violations of these laws. (*Id.* ¶¶  
5 54, 57-58.) The applicable period of limitations for claims based in contract or on  
6 negligence or violations of the consumer protection laws is six (6) years; accordingly,  
7 per the allegations included in the ACFPC, the Australian Foreign Plaintiff's claims  
8 would not be time-barred. (*Id.* ¶¶ 60-63; ACFPC ¶ 78.) Group proceedings or class  
9 actions are permitted under Australian law per Part 4A of the Supreme Court Act  
10 1986. (*Id.* ¶¶ 35-46.)

11 For these reasons, U.S. courts recognize that Australia's legal system is fair and  
12 independent and determine that that Australia is an adequate alternative forum under a  
13 forum non conveniens analysis. *See also Mastafa v. Australian Wheat Bd. Ltd.*, No.  
14 07 Civ. 7955, 2008 WL 4378443, at \*6 (S.D.N.Y. Sept. 25, 2008) (noting that  
15 "Australia's judicial system is... 'fair, independent and operates according to the rule  
16 of law,'" and that "there is no question that Australia would be an adequate alternative  
17 forum."). *See also Auxer v. Alcoa, Inc.*, No. 10-2132, 2011 WL 180034 at \*2 (3d Cir.  
18 Jan. 20, 2011) (upholding determination that Australia was adequate forum where  
19 defendant agreed that it was subject to service of process in Australia, where Australia  
20 recognized tort of negligence despite "[d]isparities between the laws of the chosen and  
21 alternative forums," as referenced by plaintiffs), and despite unavailability of general  
22 discovery deposition process, since all parties would be "subjected to the same  
23 restrictions."); *Intercontinental Dictionary Series v. De Gruyter*, 822 F. Supp. 662,  
24 681 (C.D. Cal. 1993) (disagreed with on other grounds) (holding that dismissal based  
25 on forum non conveniens would be warranted, if court had subject matter jurisdiction,  
26 where "Australia is an adequate alternative forum; the private interests weigh heavily  
27 in favor of an Australian forum; and Australia's compelling local interest in the  
28 controversy outweighs the minimal interests the United States may have in the

1 matter.”).

2 **B. China is an Adequate Alternate Forum**

3 Plaintiffs Xiaobin Wang, Dawei Li, Guicai Liu, Zhijie Deng, Lianfang Wang,  
4 Lin Zhang, Yiqin Zhang, Lin Yang, Cheng Li Zhang, Wei Guo, Yilong Liu, and Hu  
5 Jin are citizens and residents of China. The People’s Republic of China’s (“PRC”)  
6 legal system exercises judicial power independently from other organizations or  
7 individuals pursuant to its Constitution. (Declaration of Randall Peerenboom in  
8 Support of Toyota Defendants’ Motion to Dismiss Foreign Plaintiffs’ Amended  
9 Complaint (the “Peerenboom Decl.”) ¶ 19.) The PRC’s legal system is heavily based  
10 on civil law systems; however, the influence of common law systems like that of the  
11 U.S. is increasing. (*Id.*) Lawsuits involving foreign parties may be brought in higher  
12 level courts within the PRC legal system (i.e., the Intermediate or High Courts,  
13 depending on the amount in controversy), and the jurisdictional amounts of such  
14 claims are lower for civil suits that involve a foreign element (such as foreign parties).  
15 (*Id.* ¶ 26-27.) If this case proceeds in China, it will be heard by higher level courts in  
16 the Civil Division, which is viewed as having the most qualified and sophisticated  
17 judges in the court. (*Id.* ¶ 61.)

18 The laws of the PRC recognize and would permit the Chinese Foreign Plaintiffs  
19 to bring the following claims against the Toyota Defendants: breach of contract;  
20 unfair competition; false advertisement; unjust enrichment and product liability. (*See*  
21 *id.* ¶ 22.) The Chinese Foreign Plaintiffs’ claims would not be time-barred per the  
22 allegations included in the ACFPC. (*Id.* ¶ 36.) Discovery is available in cases  
23 brought before Chinese courts, and parties may inspect documents and materials and  
24 to obtain the testimony of witnesses with information about the case, who are  
25 obligated to testify in the absence of hardship. (*Id.* ¶¶ 39-43.) Parties who fail to  
26 produce evidence may be sanctioned or fined by the court. (*Id.* ¶¶ 44-46.) The PRC’s  
27 legal system would permit a multi-plaintiff suit to be brought against the Toyota  
28 Defendants, and Chinese courts have extensive experience in hearing multi-party



1 cases. (*Id.* ¶¶ 30-31.)

2 U.S. courts performing a forum non conveniens analysis (including but not  
3 limited to the Supreme Court) regularly hold that that China is an adequate alternative  
4 forum. *See Sinochem*, 549 U.S. at 435 (holding that China was an adequate  
5 alternative forum in dispute between Chinese corporation and Malaysian company);  
6 *Huang v. Advanced Battery Technologies, Inc.*, No. 09 CV 8297, 2010 WL 2143669,  
7 at \*\*5-6 (S.D.N.Y. May 26, 2010) (finding China to be adequate alternative forum for  
8 contractual dispute with ancillary tort claims where defendant consented to personal  
9 jurisdiction and agreed to toll statute of limitations claim for 120 days from date of  
10 dismissal by U.S. court, and agreed to make all evidence and witnesses available that  
11 Chinese court deemed relevant); *Tang*, 2010 WL 1375373, at \*\*6-10 (finding that  
12 defendants established that China is an adequate forum in declarations submitted by  
13 parties “[u]nder the low threshold established by the Supreme Court in *Piper Aircraft*  
14 *Co.*”).

15 **C. Egypt is an Adequate Alternate Forum**

16 Plaintiff Mostfa Fahmy is a citizen and resident of Egypt. Egypt’s judiciary is  
17 separate and independent from the executive and legislative branches of the  
18 government; its court system is based on a system of specialized circuits and is  
19 divided into Civil, Commercial, Family and Criminal circuits (Declaration of Dr.  
20 Osama Ahmed Shawki el Meligy in Support of Toyota Defendants’ Motion to  
21 Dismiss Foreign Plaintiffs’ Amended Complaint (the “Shawki el Meligy Decl.”) ¶¶ 6,  
22 9-11, 14-16.) Egypt’s Civil Code recognizes causes of action for tort and breach of  
23 contract, and permits a successful claimant to recover damages for loss resulting from  
24 the failure to perform an obligation or a delay in performance. (*Id.* ¶¶ 21-33.) In  
25 addition to monetary or pecuniary damages, the court may determine that additional or  
26 other relief, including specific performance, is warranted. (*Id.* ¶ 27.) Egypt further  
27 recognizes that a manufacturer or distributor of a product may be liable in tort where  
28 that product is defective or causes physical or material damage. (*Id.* ¶¶ 35-38.) Based

1 on the allegations included in the ACFPC, the Egyptian Foreign Plaintiff's claims  
2 would not be time-barred under Egyptian law. (*Id.* ¶ 39.) Discovery, including the  
3 production and review of documents, declarations, interrogatories, and witness  
4 testimony, is available in cases brought in the Egyptian legal system. (*Id.* ¶¶ 63-65.)  
5 Egypt has a detailed system for estimating and awarding damages to successful  
6 claimants. (*Id.* ¶¶ 40-56.)

7 U.S. courts have repeatedly determined that Egypt is an adequate alternative  
8 forum. *See Niv* 710 F. Supp. 2d at 337 (S.D.N.Y. 2008) (finding Egypt to be adequate  
9 alternative forum where defendants stipulated that they were amenable to service in  
10 Egypt and rejecting argument that forum could not provide fair, safe trial to plaintiffs,  
11 stating "[c]ourts must be cautious before finding incompetence or corruption by other  
12 nation's judicial systems"); *Dabbous v. Am. Express Co.*, No. 06 Civ. 11345, 2009  
13 WL 1403930, at \*\*5-6 (S.D.N.Y. May 8, 2009) (noting that courts in jurisdiction had  
14 previously found Egypt to be adequate alternative forum and finding that plaintiff's  
15 argument that remedy may be more difficult or time consuming in Egypt did not  
16 warrant conclusion that Egypt was not adequate alternative forum).

17 Moreover, U.S. case law is clear that the recent political events in Egypt do not  
18 render Egypt an inadequate forum because these events have not had an adverse effect  
19 on its judicial system. *See Paolicelli v. Ford Motor Co.*, 289 F. App'x 387, 391 (11th  
20 Cir. 2008) (noting, in upholding dismissal on grounds of forum *non conveniens*, that  
21 alleged political instability in Columbia did not weigh against dismissal on grounds of  
22 forum *non conveniens* absent a showing that unrest affected Columbian judicial  
23 system or litigation of the case); *Rustal Tarading U.S., Inc. v. Makki*, 17 F. App'x 331  
24 (6th Cir. 2001) (affirming dismissal on grounds of forum *non conveniens* despite  
25 allegations of political unrest in Sierra Leone the absence of credible evidence that  
26 parties would be prevented from accessing its courts); *Blanco v. Banco Indus. de*  
27 *Venez., S.A.*, 997 F.2d 974 (2d Cir. 1993) (affirming decision that Venezuela was  
28 adequate alternative forum despite allegations of political unrest in Venezuela). As



1 Dr. Shawki el Meligy's declaration makes clear, the recent political events in Egypt  
2 have not changed Egypt's Civil Code and are not expected to affect resolution of civil  
3 litigation matters. (Shawki el Meligy Decl. ¶¶ 17-18.)

4 **D. Germany is an Adequate Alternate Forum**

5 Plaintiff Gabriele Zieme-Diedrich is a citizen and resident of Germany.  
6 Germany's judicial branch is independent from the executive and legislative branches  
7 of its government and provides for the full and fair litigation of claims. (Declaration  
8 of Dr. Stefan Rützel in Support of Toyota Defendants' Motion to Dismiss Foreign  
9 Plaintiffs' Amended Complaint (the "Rützel Decl.") ¶ 7.) The German legal system is  
10 comprised of local and regional trial courts, as well as two levels of appellate courts  
11 and the Federal Constitutional Court, the highest court in Germany. (*Id.* ¶ 9.)  
12 Germany has adopted a civil law system, which includes specific provisions  
13 governing contracts, torts and damages. (*Id.* ¶ 11.)

14 Causes of action similar to those asserted by the German Foreign Plaintiffs in  
15 the ACFPC are available under German law, including claims for breach of contract  
16 and breach of guarantee, as well as for fraudulent misrepresentation and false  
17 advertising. (*Id.* ¶¶ 14-33.) Pre-trial discovery is permitted under German law, and  
18 the court may order or require the production of documents or the testimony of an  
19 expert in deciding a case. (*Id.* ¶ 51.) German plaintiffs with claims that are legally or  
20 factually related may join their claims in a single case before a German court with  
21 jurisdiction. (*Id.* ¶ 47.) The German legal system also provides for legal aid to  
22 indigent claimants who have difficulty paying the cost of litigation of their claims. (*Id.*  
23 ¶ 53.)

24 For the reasons set forth above, U.S. courts routinely find that Germany is an  
25 adequate alternative forum despite superficial differences in the German and U.S.  
26 legal systems. *See Kirch v. Liberty Media Corp.*, No. 04 Civ. 667, 2006 WL 3247363,  
27 at \*\*5-7 (S.D.N.Y. Nov. 8, 2006) (finding that Germany was adequate forum despite  
28 differences in pleading requirements and discovery, and noting that "some

1 inconvenience or the unavailability of beneficial litigation procedures similar to those  
2 available in the federal district courts does not render an alternative forum  
3 inadequate.”); *Helog AG v. Kaman Aerospace Corp.*, 228 F. Supp. 2d 91, 93 (D.  
4 Conn. Sept. 30, 2002) (holding Germany adequate forum based on recognition by  
5 German law of “causes of action for products liability and wrongful death,” and where  
6 plaintiffs did not “seriously contend” that unavailability of trial by jury and punitive  
7 damages would deprive them of adequate forum); *Baumgart v. Fairchild Aircraft*  
8 *Corp.*, No. SA-90-CA-818, 1991 WL 487242, at \*2 (W.D. Tex. Sept. 30, 1991), *aff’d*,  
9 981 F.2d 824 (5th Cir. 1993).

10 **E. Guatemala is an Adequate Alternate Forum**

11 Plaintiff Gustavo Lopez is a citizen and resident of Guatemala. Guatemala’s  
12 legal system is independent from the other branches of government, and its  
13 Constitution guarantees due process to all individuals in Guatemalan courts.  
14 (Declaration of Francisco Chavez Bosque in Support of Toyota Defendants’ Motion to  
15 Dismiss Foreign Plaintiffs’ Amended Complaint (the “Chavez Decl.”) ¶ 8.) The  
16 Guatemalan legal system consists of both lower and appellate courts, as well as the  
17 Supreme Court of Justice. (*Id.* ¶ 9.) Parties are permitted to engage in discovery,  
18 which includes the production and exchange of documents and the taking of  
19 deposition testimony, before the complaint is answered in the event that a defendant  
20 raises any preliminary defenses, as well as after the complaint has been answered. (*Id.*  
21 ¶¶ 21, 29.) Parties may also make a request to the court for a declaration of an  
22 opposing party or a material witness. (*Id.* ¶¶ 23-26.) An indigent plaintiff in  
23 Guatemala may seek and obtain free legal assistance to prosecute claims. (*Id.* ¶ 14.)

24 The Guatemalan Civil Code recognizes claims sounding in both contract and  
25 tort law, including claims based on alleged hidden defects in consumer products. (*Id.*  
26 ¶ 38.) The Guatemalan Foreign Plaintiffs’ claims could be recognized under the  
27 Guatemalan Civil Code as claims for annulment, redhibition (i.e., dissolution of  
28 contract), hidden defects, negligence, damages and unjust enrichment. (*Id.* ¶ 51.)

1 Causes of action for unfair competition, products liability and violations of consumer  
2 protection laws, similar to those included in the ACFPC, are also recognized by the  
3 Guatemalan legal system. (*Id.* ¶¶ 56-57.)

4 Guatemalan courts will not be prevented from exercising jurisdiction over  
5 claims by Guatemalan Foreign Plaintiffs as a result of the filing of the ACFPC in the  
6 U.S. and outside of Guatemala. (*Id.* ¶¶ 45-47.) If Guatemalan Foreign Plaintiffs  
7 bring an action in the Guatemalan courts following a dismissal of the ACFPC on  
8 grounds of forum non conveniens, the Guatemalan court will refer to the concepts and  
9 amounts of damages in this Court in rendering a decision on the claims. (*Id.* ¶ 48.)

10 For the foregoing reasons, U.S. courts have held that Guatemala is an adequate  
11 alternative forum. *See Aldana v. Del Monte Fresh Produce N.A., Inc.*, 578 F.3d 1283,  
12 1290-92 (11th Cir. 2009) (affirming decision that Guatemala was adequate alternative  
13 forum based on determination that Guatemala possessed jurisdiction over the entire  
14 case and the parties, and rejecting plaintiffs' argument that Guatemala was  
15 purportedly unsafe and corrupt), *cert. denied*, 131 S. Ct. 102 (2010); *Palacios*, 2010  
16 WL 4720409, at \*\*6-12 (S.D.N.Y. Nov. 19, 2010) (concluding that Guatemala was  
17 adequate alternative forum where defendant consented to process in Guatemala, where  
18 plaintiffs failed to undermine showing that Guatemalan courts had not been  
19 "permanently 'divested' of jurisdiction" by initiation of action in U.S., where  
20 "essential subject matter" of dispute could be litigated in Guatemala, where plaintiffs  
21 made no showing of inadequate procedural safeguards in Guatemalan courts, and  
22 where "every American court to have considered the issue has found Guatemalan  
23 courts to be adequate alternatives").

24 **F. Indonesia is an Adequate Alternate Forum**

25 Plaintiffs Sisiliana Ridwan, Nani Indriyastuti, Melati Indrayani, Jasni, Ananda,  
26 Chairul Lubis, Edward Syahputra, Herbert Sihite, Martha Siregar, Pangihutan  
27 Simanjuntak, Tetti Suriati and Trimurti Jazanul are citizens and residents of  
28

1 Indonesia.<sup>3</sup> The Indonesian legal system, which is largely based on the Dutch legal  
2 system, is independent from the other branches of the Indonesian government and free  
3 from intervention by the legislature. (Declaration of Muhammad Husseyn Umar in  
4 Support of Toyota Defendants' Motion to Dismiss Foreign Plaintiffs' Amended  
5 Complaint (the "Umar Decl.") ¶¶ 12-13, 17-18.) The Indonesian legal system consists  
6 of a three-tiered court system that provides for various levels of appeal from lower  
7 court decisions. (*Id.* ¶ 20.) Class actions brought by and on behalf of consumers with  
8 claims involving common questions of fact or law are recognized by and available  
9 under Indonesian law. (*Id.* ¶¶ 53-57.)

10 Indonesian law, which is based on a civil law system, provides protections for  
11 consumers of goods and services under the Indonesian Consumer Protection Law. (*Id.*  
12 ¶¶ 27-28.) Indonesian law recognizes claims based on violations of consumer  
13 protections laws, including product liability, false advertising and misrepresentations  
14 regarding products; it recognizes claims sounding in both tort and breach of contract  
15 and provides remedies to consumers who have sustained damage under either theory  
16 of liability. (*Id.* ¶¶ 27-45.) Discovery, through production and examination of  
17 documentary evidence, as well as witness examinations, is available in cases brought  
18 before Indonesian courts. (*Id.* ¶¶ 60-61.) The Indonesian legal system is efficient: in  
19 general, an Indonesian court will render a judgment within approximately six (6)  
20 months from the commencement of an action (although a court may take longer to  
21 render a decision, depending on the complexity of the case). (*Id.* ¶ 63.) Based on the  
22 allegations included in the ACFPC, the Indonesian Plaintiffs' claims are not time-  
23 barred under Indonesian law. (*Id.* ¶ 49.)

24 U.S. courts have acknowledged that Indonesia is an adequate alternative forum.  
25 *See PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc.*, 138 F.3d 65, 74-75 (2d  
26 Cir. 1998) (affirming decision that Indonesia was adequate alternative forum for  
27

28 <sup>3</sup> Plaintiffs have also voluntarily dismissed Indonesian named plaintiff Melati Indrayani from their complaint.

1 action alleging breach of contract, breach of fiduciary duty and violations of RICO  
2 even though Indonesia does not have RICO statute where district court determined  
3 that causes of action available in Indonesian courts adequately addressed the  
4 underlying controversy).

5 **G. Jamaica is an Adequate Alternate Forum**

6 Plaintiff Paul Anthony Banton is a citizen and resident of Jamaica. Jamaica's  
7 legal system, which is patterned on that of the United Kingdom, is independent, and  
8 its common law, which is the English common law, recognizes and gives effect to the  
9 full range of equitable rights and remedies available under English law. (Declaration  
10 of Sandra Minott-Phillips in Support of Toyota Defendants' Motion to Dismiss  
11 Foreign Plaintiffs' Amended Complaint (the "Minott-Phillips Decl.") ¶ 9.) The  
12 Jamaican legal system recognizes claims that, like Foreign Plaintiffs' claims, are  
13 based on alleged breach of contract and tort. (*Id.* ¶ 14.) Jamaica has also enacted a  
14 Fair Competition Act that permits consumers to bring claims arising out of alleged  
15 misleading advertising, and a Consumer Protection Act that provides for civil liability  
16 of a provider of goods who is found to be negligent where such goods cause personal  
17 injury or other harm. (*Id.* ¶¶ 21, 22.) Based on the allegations included in the  
18 ACFPC, claims by the Jamaican Foreign Plaintiff would not be time-barred under  
19 Jamaican law, which has a six-year statute of limitations for claims in tort or contract.  
20 (*Id.* ¶ 23.)

21 Jamaica's civil procedure rules permit representative actions on behalf of a  
22 defined class of persons with similar claims or interests in the subject matter of  
23 litigation. (*Id.* ¶ 13.) A Jamaican court may award aggravated damages (where it  
24 determines that the defendant's motives or conduct aggravated the plaintiff's injury)  
25 or exemplary damages (which are intended to punish the defendant and deter  
26 subsequent similar behavior) to a plaintiff where appropriate. (*Id.* ¶¶ 19, 20.)

27 U.S. courts have regularly found Jamaica to be an adequate alternative forum  
28 under a *forum non conveniens* analysis. *See Seales v. Panamanian Aviation Co.*, 356



1 F. App'x 461, 463-64 (2d Cir. 2009) (finding district court did not abuse its discretion  
2 in determining Jamaica was adequate forum where defendant was amenable to process  
3 there and statute upon which plaintiff relied in arguing that statute of limitations  
4 would bar his claim in Jamaica (1) was not raised before district court; and (2) would  
5 bar suit in U.S. as well); *Proyectos Orchimex de Costa Rica S.A. v. E.I. du Pont de*  
6 *Nemours & Co.*, 896 F. Supp. 1197, 1201-02 (M.D. Fla. 1995) (noting that other  
7 courts have held Jamaica to be an adequate forum, and that it is not necessary for  
8 alternative forum to have "extensive pre-trial discovery procedures comparable to  
9 those found in the United States," in concluding that adequate alternative forum  
10 existed based on the record and applicable law)

11 **H. Malaysia is an Adequate Alternate Forum**

12 Plaintiff Mariam Ibrahim is a citizen and resident of Malaysia. The judicial  
13 system of Malaysia, which is independent from the other branches of Malaysia's  
14 government per the Federal Constitution of Malaysia, is based on the common law  
15 system, and English law would be applicable to claims brought in Malaysia that are  
16 similar to those asserted by Foreign Plaintiffs against the Defendants. (Declaration of  
17 Dr. Yeow Choy Choong in Support of Toyota Defendants' Motion to Dismiss Foreign  
18 Plaintiffs' Amended Complaint (the "Choy Choong Decl.") ¶¶ 16-17.) Malaysian  
19 law recognizes claims sounding in tort and breach of contract; Malaysia has also  
20 enacted various statutes, including the Consumer Protection Act 1999 and the Sales of  
21 Goods Act 1957 (Revised 1989), that permit courts to grant a wide range of relief to a  
22 consumer who has suffered or is likely to suffer loss or damages in connection with  
23 the purchase or use of goods, including vehicles, or for breach of warranty by a seller.  
24 (*Id.* ¶¶ 25-26, 36, 41.) The applicable period of limitations for claims founded on  
25 contract or tort is six (6) years; accordingly, per the allegations included in the  
26 ACFPC, the Malaysian Foreign Plaintiff's claims would not be time-barred. (*Id.* ¶ 31;  
27 ACFPC ¶ 72.) Representative Actions are available under Malaysian law to members  
28 of a class with common grievances or injuries. (*Id.* ¶ 53.)

1 U.S. courts have previously found that Malaysia is an adequate alternative  
2 forum for deciding claims that, like the Malaysian Foreign Plaintiffs', sound in both  
3 tort and breach of contract. *See Jayaraman v. Salomon, Inc.*, No. 87 Civ. 2781, 1991  
4 WL 61071, at \*4 (S.D.N.Y. Apr. 5, 1991) (holding that Malaysia was adequate  
5 alternative forum for hearing claims based on breach of contract, negligence, breach  
6 of fiduciary duty and infliction of emotional and physical harm where explanation of  
7 Malaysia law presented in affidavit offered by defendants indicated that remedies  
8 available in Malaysia were "far from 'clearly unsatisfactory.'").

9 **I. Mexico is an Adequate Alternate Forum**

10 Plaintiffs Laura Jimenez Centeno, Eliza Esquivel Lozano, Alfredo Hernandez  
11 Barranco, Ernesto Reyes Diaz, Emilio Mogollon Quintanar, and Gonzalo Oros  
12 Villalobos are citizens and residents of Mexico. The judiciary branch of Mexico is  
13 stable and independent from the other branches of the Mexican government.  
14 (Declaration of Professor Jose M. Serna de la Garza in Support of Toyota Defendants'  
15 Motion to Dismiss Foreign Plaintiffs' Amended Complaint (the "Serna de la Garza  
16 Decl.") ¶¶ 16-18.) Similar to the legal system of the U.S., the Mexican judicial  
17 system is comprised of both a federal court system and a state court system. (*Id.* ¶ 6.)

18 Mexican law recognizes and permits claims sounding in tort and in breach of  
19 contract. (*Id.* ¶¶ 30-40.) Mexico's Federal Act on Consumer Protection ("FACP")  
20 provides remedies to consumers of goods or services who have been damaged or  
21 incurred losses as a result of the conduct of suppliers, including claims derived from  
22 alleged hidden defects of products or services. (*Id.* ¶¶ 20, 23, 30-40.) The FACP  
23 provides for representation of consumers individually or in group actions. (*Id.* ¶¶ 26-  
24 29.) Mexican courts have the power to compel witnesses to testify in order to  
25 facilitate the obtaining of evidence and information relevant to a case. (*Id.* ¶ 59.) It  
26 appears that the Mexican Foreign Plaintiffs' claims would not be time-barred because  
27 Mexican law provides for the tolling of the applicable statute(s) of limitations where an  
28 action is initially brought outside of Mexico; moreover, a claim may only be barred by



1 the statute of limitations if it is raised as a defense by the defendant. (*Id.* ¶¶ 49-50.)

2 Mexican law permits the recovery of both patrimonial, or money, damages and  
3 moral damages. (*Id.* ¶ 45.) U.S. courts have recognized the apparent availability of  
4 claims similar to those available in the U.S., as well as damages, in finding that  
5 Mexico is an adequate alternative forum and that dismissal. *See Loya*, 583 F.3d at 666  
6 (upholding lower court determination that Mexico was adequate alternative forum,  
7 notwithstanding plaintiffs argument of difference in potential recovery, where  
8 “[u]nquestionably, Mexico provides a remedy for breach of contract”); *Gallego v.*  
9 *Garcia*, No. 07CV1185, 2010 WL 2354585, at \*3 (S.D. Cal. June 9, 2010) (holding  
10 that Mexico was adequate alternative forum to hear plaintiffs’ fraud and state law tort  
11 action where plaintiffs offered no evidence that they “will have no remedy or even a  
12 diminished remedy against Defendants should they prove their factual allegations in a  
13 Mexican court”); *Ruelas Aldaba v. Michelin N. Am., Inc.*, No. C 04-5369, 2005 WL  
14 3560587, at \*4 (N.D. Cal. Dec. 29, 2005) (noting that courts have found that Mexico  
15 is an adequate alternative forum in cases involving manufacturing defects, despite fact  
16 that strict liability theory is unavailable in Mexican legal system, in determining  
17 Mexico was adequate alternative forum).

18 **J. The Philippines is an Adequate Alternate Forum**

19 Plaintiff Francis Joseph Coronel is a citizen and resident of the Philippines.  
20 The Philippine judicial system, which is based primarily on the Spanish and American  
21 legal systems, is independent from the executive and legislative branches of the  
22 Philippine government. (Declaration of Lorna Patajo Kapunan in Support of Toyota  
23 Defendants’ Motion to Dismiss Foreign Plaintiffs’ Amended Complaint (the “Patajo  
24 Kapunan Decl.”) ¶¶ 15-17.) The Philippines has a civil law system, and further  
25 recognizes and adheres to generally accepted principles of international law. (*Id.* ¶¶  
26 19, 22.) The Philippine Constitution, which is based on the U.S. Constitution,  
27 recognizes the right of all people to equal protection and due process of the law. (*Id.*  
28 ¶¶ 16, 24.)

1 The law of the Philippines recognizes and permits causes of action for torts and  
2 well as for breach of contract or warranty. (*Id.* ¶¶ 25, 38-40.) Additionally, the  
3 Consumer Act of the Philippines provides remedies to consumers for deceptive acts or  
4 practices by a seller or supplier of goods, including an injunction restraining the  
5 conduct of the seller or supplier and actual damages to the victim. (*Id.* ¶¶ 41-43.) The  
6 Philippine Foreign Plaintiff's claims would not be time-barred per the allegations  
7 asserted in the ACFPC. (*Id.* ¶ 31; ACFPC ¶ 73.) The Philippines permits class or  
8 group actions to be brought in civil cases. (*Id.* ¶¶ 58-60.) Depositions and other  
9 modes of discovery, including interrogatories and other written discovery, as well as  
10 production and inspection of documents and things, may be utilized by litigants in  
11 cases brought in the Philippines. (*Id.* ¶¶ 69-71.)

12 The Philippines provides for legal assistance to indigent litigations, including  
13 the waiver of docket fees. (*Id.* ¶¶ 61-64.)

14 U.S. courts, including courts in the Ninth Circuit, have concluded that the  
15 Philippines is an adequate alternative forum in connection with a motion to dismiss on  
16 grounds of *forum non conveniens*. *Delgado v. Shell Oil Co.*, 890 F. Supp. 1324,  
17 1362-65 (S.D. Tex. 1995) (concluding the Philippines, among other forums, was  
18 adequate alternate forum), *aff'd*, 231 F.3d 165 (5th Cir. 2000); *Contact Lumber Co. v.*  
19 *P.T. Moges Shipping Co., Ltd.*, 918 F.2d 1446, 1450 (9th Cir. 1990) (affirming  
20 determination that the Philippines was adequate alternative forum where defendant  
21 agreed to submit to jurisdiction there and waived any defense of statute of limitations  
22 which would not be available if case was heard in U.S., and where plaintiff failed to  
23 present adequate support that litigation in the Philippines is time consuming or that  
24 collecting a judgment is problematic

25 **K. Russia is an Adequate Alternate Forum**

26 Plaintiffs Natalia Komarova, Igoshin Vladimir Vladimirovich, and Valerii  
27 Kolganov are citizens and residents of Russia. The Russian judicial system consists  
28 of a unified system of courts that are independent of the legislative and executive

1 branches of the Russian government. (Declaration of William Elliott Butler in  
2 Support of Toyota Defendants' Motion to Dismiss Foreign Plaintiffs' Amended  
3 Complaint (the "Butler Decl.") ¶¶ 14, 16, 21.) The Civil Code of the Russian  
4 Federation contains various provisions intended to protect consumers in connection  
5 with transactions for the purchase and sale of good, and recognizes causes of action  
6 for violations of these provisions, including claims sounding in tort and breach of  
7 contract. (*Id.* ¶¶ 36-47.) Russian courts consider thousands of consumer protection  
8 cases each year. (*Id.* ¶ 64.) Indeed, Ms. Komarova currently has such a consumer  
9 protection case pending in her local court. Gilford Decl. Exh. E. Class actions are  
10 permitted in consumer protection cases under Russian law. (*Id.* ¶ 41.)

11 Evidence, including documentary evidence and testimony obtained via the  
12 examination of witnesses, may be obtained in the Russian judicial system, with the  
13 assistance of the court or otherwise. (Butler Decl. ¶ 46.) Russia has a detailed system  
14 for the enforcement of money judgments and other judgments in civil suits decided by  
15 Russian courts. (*Id.* ¶¶ 48-57.)

16 For the foregoing reasons, U.S. courts have repeatedly found that Russia is an  
17 adequate alternative forum. *See Vorbiev v. McDonnell Douglas Helicopters, Inc.*, No.  
18 C 08-05539, 2009 WL 1765675, at \* 2 (N.D. Cal. June 18, 2009) (holding Russia was  
19 adequate alternative forum where defendant consented to jurisdiction of Russian  
20 courts; where submissions by Russian practicing lawyer established that any judgment  
21 by Russian court would be enforceable and discovery would be available, and where  
22 plaintiff's submission did not demonstrate that plaintiffs could not obtain relief within  
23 Russian judicial system); *Overseas Media, Inc. v. Skvortsov*, 277 F. App'x 92, 97 (2d  
24 Cir. 2008) (affirming determination that Russia was adequate alternative forum where  
25 it was undisputed that defendant was subject to service of process).

26 **L. South Africa is an Adequate Alternate Forum**

27 Plaintiff Catherine De Bruin is a citizen and resident of South Africa. South  
28 Africa's legal system is fair, independent and well-respected in the legal community.

1 (Declaration of Jeremy John Gauntlett in Support of Toyota Defendants' Motion to  
2 Dismiss Foreign Plaintiffs' Amended Complaint (the "Gauntlett Decl.") ¶¶ 13-14).  
3 South African law recognizes causes of action in both contract and tort that will  
4 provide the South African plaintiff(s) with a mechanism to recover for any alleged  
5 wrongdoing by the Toyota Defendants relating to the marketing, manufacturing, and  
6 sale of vehicles that they purchased. (*Id.* ¶¶ 18-26.)

7 The South African legal system provides for discovery, including the  
8 production of documents and the oral testimony of witnesses. (*Id.* ¶¶ 40-43.)  
9 Conducting discovery would likely be easier if the case was tried in South Africa,  
10 since all the relevant acts occurred in South Africa, thus making it extremely likely  
11 that all key documents and witnesses are in South Africa; in contrast, it may be  
12 difficult for plaintiffs to obtain the testimony of South African witnesses in U.S.  
13 litigation. (*Id.* ¶¶ 36-39.) South African plaintiff(s) would have access to assistance  
14 in funding any litigation against defendants in South Africa. (*Id.* ¶ 29.)

15 A recent Sixth Circuit decision involving a products liability case against  
16 Toyota Motor Corporation Worldwide also establishes that South Africa is an  
17 adequate alternative forum for purposes of deciding the claims against the Toyota  
18 Defendants that are asserted in the ACFPC by the South African Foreign Plaintiffs.  
19 *See Thomson v. Toyota Motor Corp. Worldwide*, 545 F.3d 357, 365 (6th Cir. 2008)  
20 (affirming holding that South Africa was adequate alternative forum in products  
21 liability case alleging brake failure where corporate entities were amenable to service  
22 there). In *Thomson*, the court concluded that the defendants' showing that they were  
23 amenable to process in South Africa was sufficient to warrant a finding that South  
24 Africa was an adequate alternative forum for hearing the case. *Id.* at 365. As  
25 discussed supra, the Toyota Defendants agree that they are amenable to process in  
26 South Africa for purposes of Foreign Plaintiffs' claims against them as alleged in the  
27 ACFPC.

1           **M. Turkey is an Adequate Alternate Forum**

2           Plaintiff Hatice Hulya Yigit is a citizen and resident of Turkey. Turkey has a  
3 fair and independent judiciary and a civil law system, with a number of Turkish Codes  
4 regarding private law. (Declaration of Murat R. Ozsunay in Support of Toyota  
5 Defendants' Motion to Dismiss Foreign Plaintiffs' Amended Complaint (the  
6 "Ozsunay Decl.") ¶¶ 8-14, 18.) As an applicant for admission to the European Union,  
7 Turkey has enacted several new Codes that are influenced by European and Swiss-  
8 German laws. (*Id.* ¶ 24.)

9           Turkish law recognizes and would permit Turkish plaintiff(s) to bring claims  
10 for economic loss arising from alleged defects/malfunctions in the vehicles that they  
11 purchased in Turkey. (*Id.* ¶¶ 27-70.) Turkish courts would have jurisdiction over  
12 claims by purchasers of vehicles in Turkey. (*Id.* ¶¶ 57, 73.) Moreover, Turkey, by  
13 virtue of its extensive laws relating to consumer protection, has an interest in resolving  
14 a dispute regarding vehicles purchased in Turkey by Turkish residents. (*Id.* ¶¶ 78-79.)

15           The Turkish Code of Civil Procedure recognizes and makes available to parties  
16 various procedural tools for obtaining evidence, including production of documentary  
17 evidence and examination of witnesses. (*Id.* ¶¶ 77, 79.) Turkish judgments are  
18 readily enforceable in Turkish courts. (*Id.* ¶ 84.)

19           A number of U.S. courts have already recognized Turkey as an adequate  
20 alternative forum. *See Mercier v. Sheraton Int'l, Inc.*, 981 F.2d 1345, 1349 (1st Cir.  
21 1992) (affirming decision that Turkey was adequate alternative forum based on  
22 detailed affidavits submitted on behalf of defendants, and conditioned upon  
23 acceptance of jurisdiction by Turkish courts and defendants' agreement to submit to  
24 jurisdiction, waive statute of limitation defense, and satisfy any Turkish court  
25 judgment; differences in discovery between U.S. and Turkish judicial systems was not  
26 dispositive); *Turedi*, 460 F. Supp. 2d at 524 (noting, in finding that Turkey was  
27 adequate alternative forum, that an "alternative forum is ordinarily adequate if the  
28 defendants are amenable to service of process there and the forum permits litigation of



1 the subject matter of the dispute,” and rejecting argument that forum was inadequate  
2 because Turkish law may not permit causes of actions or remedies “precisely  
3 equivalent” to those in the United States).

4 **III. THE PRIVATE AND PUBLIC INTEREST FACTORS WEIGH**  
5 **HEAVILY IN FAVOR OF DISMISSAL**

6 Because it is clear that each of Foreign Plaintiffs’ countries is an adequate  
7 alternative forum for resolving their respective claims against the Toyota Defendants,  
8 the only remaining inquiry is whether a balancing of public and private interest factors  
9 weighs in favor of dismissal. “[I]f the balance of conveniences suggests that trial in  
10 the chosen forum would be unnecessarily burdensome for the defendant or the court,  
11 dismissal is proper.” *Lueck*, 236 F.3d at 1145.

12 In this case, not just most of the factors this Court must consider, but *every*  
13 *single one* of the private interest factors, i.e.:

- 14 1) “the residence of the parties and the witnesses;
- 15 2) the forum’s convenience to the litigants;
- 16 3) access to physical evidence and other sources of proof;
- 17 4) whether unwilling witnesses can be compelled to testify;
- 18 5) the cost of bringing witnesses to trial;
- 19 6) the enforceability of the judgment; and
- 20 7) ‘all other practical problems that make trial of a case easy,  
21 expeditious and inexpensive;”

22 (*Id.*) weigh in favor of each plaintiff’s adequate alternative forum. Similarly, *each*  
23 *and every* public interest factor, i.e.:

- 24 8) “local interest of lawsuit;
- 25 9) the court’s familiarity with governing law;
- 26 10) burden on local courts and juries;
- 27 11) congestion in the court; and
- 28 12) the costs of resolving a dispute unrelated to this forum”

1 (*Id.*) weighs against maintaining Foreign Plaintiffs' action in California.

2 The recent analysis of these factors in the Sixth Circuit Court of Appeals'  
3 dismissal of *Estate of Thomson v. Toyota Motor Corp. Worldwide*, 545 F.3d 357  
4 conclusively demonstrates why this court should similarly dismiss the ACFPC. In  
5 *Thomson*, the court analyzed whether a U.S. products liability action involving a  
6 vehicle "purchased, kept, maintained, and rented in South Africa" that was part of a  
7 collision allegedly resulting from that vehicle's malfunctioning brakes should be  
8 dismissed on grounds of *forum non conveniens*. *Id.* at 366. In affirming the trial  
9 court's *sua sponte* determination that the proper forum for resolution of the dispute  
10 was South Africa, the Sixth Circuit agreed that the private interest factors favored  
11 dismissal because all relevant conduct, including manufacture, purchase, rental and  
12 collision, occurred in South Africa, and because documents related to the vehicle and  
13 the accident, as well as witnesses involved in the sale, maintenance and rental of the  
14 vehicle, were located in South Africa. *Id.* The Court similarly determined that the  
15 public interest factors favored dismissal because:

16 The result of this trial will have a greater impact on the residents of South  
17 Africa; the car was manufactured to the requirements of vehicles  
18 operated in South Africa, not those that govern vehicles in the United  
19 States. Any outcome might alter those requirements for vehicles in South  
20 Africa. If the case continued in this court, American jurors would be  
21 burdened by a case whose resolution will be felt the greatest in South  
22 Africa, while South African citizens would be deprived of hearing a case  
23 regarding the safety of a vehicle marketed, sold, and used in their  
24 country.

25 *Id.* Notably, the Sixth Circuit reached this conclusion even though plaintiffs in  
26 *Thomson* were United States citizens suing in their home jurisdiction. As is set forth  
27 in detail below, the application of the private and public interest factors to this  
28 litigation lead to the inescapable conclusion that each of Foreign Plaintiffs' forums is



1 the superior forum for resolution of their claims.

2 **A. All of the Private Interest Factors Favor Dismissal, as the Parties,**  
3 **Witnesses and Evidence are Located Abroad**

4 1. Plaintiffs, Witnesses, and Proper Defendants are Located Abroad

5 Each and every one of the named class representatives are residents and citizens  
6 of foreign countries. ACFPC ¶¶ 36-78. While the forum choice of a U.S. plaintiff  
7 may be subject to deference “[b]ecause the central purpose of any *forum non*  
8 *conveniens* inquiry is to ensure that the trial is convenient, a foreign plaintiff’s choice  
9 deserves less deference.” *Piper Aircraft*, 454 U.S. at 255-56. “This is because foreign  
10 plaintiffs typically have fewer contacts with the forum, suggesting that they have  
11 chosen it for some reason other than convenience.” *Taiwan Straits Air Crash* 331 F.  
12 Supp. 2d at 1190; *See also In re Air Crash over the Mid-Atlantic on June 1, 2009*, No.  
13 10-2144, -- F. Supp. 2d. --, 2010 WL 3910354 at \*11 (N.D. Cal. Oct. 4, 2010) (noting  
14 that plaintiffs’ counsel had “candidly acknowledged that the foreign Plaintiffs are  
15 forum shopping” and holding that “[t]his acknowledgment – a reflection of the simple  
16 reality – succinctly explains why the foreign Plaintiffs’ forum choice is not entitled to  
17 much deference.”) These Foreign Plaintiffs’ choice to sue Toyota in the United  
18 States because “in the countries that I have mentioned to you, they do not have class  
19 actions” further demonstrates why their choice of forum is not entitled to much  
20 deference. Gilford Decl., Exh. J.

21 Moreover, because the alleged misconduct occurred outside the U.S., the great  
22 majority of the witnesses are likely to be in the foreign alternative forum. See  
23 *Thomson*, 545 F.3d at 366. Indeed, to the extent that any Foreign Plaintiff named or  
24 described any witnesses to alleged UA events, those witnesses either are specifically  
25 listed as residing outside the United States or appear to reside outside the United  
26 States. *See, e.g.*, Gilford Decl., Exhs. C, D, F, H.

27 As set forth more fully in the Toyota Defendants’ Foreign Jurisdictional Issues  
28 Motion, only TMC could potentially have any connection to the wrongdoing alleged

1 by Foreign Plaintiffs in the ACFPC. In addition, as is set forth in the Foreign  
2 Jurisdictional Issues Motion, the proper defendants to the Foreign Plaintiffs' actions  
3 are located abroad and outside of this Court's jurisdiction. (Dkt. No. 663-1.) While  
4 the Toyota Defendants have consented to service of process in each of the foreign  
5 jurisdictions in the event that this Court does not dismiss them pursuant to the  
6 arguments set forth in the Foreign Jurisdictional Issues Motion (Koyanagi Decl. ¶6;  
7 Tanaka Decl. ¶6; Nepute Decl. ¶2; Ro Decl. ¶6; Pelliccioni Decl. ¶2), the proper  
8 defendants to this dispute are not U.S. residents, which further favors dismissal. (Dkt.  
9 No. 663-1.)

10 2. California is Not Convenient to the Litigation

11 Because Foreign Plaintiffs are not California or U.S. residents and are scattered  
12 across every continent but Antarctica, they cannot argue in good faith that it would be  
13 more convenient to litigate their claims in the U.S. *Piper Aircraft* 454 U.S. at 256; *In*  
14 *re Taiwan Straits Air Crash*, 331 F. Supp. 2d at 1190. Indeed, even if the Foreign  
15 Plaintiffs argue that they are willing to travel to the United States to prosecute their  
16 case, only two of the thirteen countries at issue in this litigation (i.e., Australia and  
17 Germany) are part of the United States' visa waiver program. Consequently, Foreign  
18 Plaintiffs from other countries would be required to first visit a U.S. embassy in their  
19 home country to obtain a visa permitting travel to the United States. Gilford Decl.  
20 Exh. K, Peerenboom Decl. ¶¶ 16, 70-73. Even if Foreign Plaintiffs were willing to  
21 undergo this inconvenience, it is by no means certain that they will be successful in  
22 obtaining such a visa. *See, e.g.*, Peerenboom Decl. ¶ 72. California is also not only  
23 inconvenient for the Toyota entities responsible for manufacturing and selling Foreign  
24 Plaintiffs' automobiles, but those entities are not subject to jurisdiction in the United  
25 States. (Dkt. No. 663-1.)

26 3. Evidence is Located Abroad

27 Foreign Plaintiffs have alleged that they purchased and serviced their vehicles  
28 abroad, and several of them have alleged that they communicated with dealerships in

1 their home countries.<sup>4</sup> As a result, the evidence regarding the marketing, advertising,  
2 sale and maintenance of their vehicles is located abroad, and is not within the  
3 possession, custody or control of the Toyota Defendants. Koyanagi Decl. ¶¶2-5;  
4 Tanaka Decl. ¶¶2-5; Declaration of Dino Triantafyllos ("Triantafyllos Decl.") ¶¶2-5;  
5 Ro Decl. ¶¶2-5. Any such foreign evidence, e.g. any dealership or similar third party  
6 documentation is beyond the subpoena power of this Court. In addition, to the extent  
7 that any Foreign Plaintiff, such as Turkish class representative Yigit, alleges that UA  
8 resulted in an accident, any related police reports and insurance claim documentation  
9 are located abroad. Gilford Decl. ¶ G. Foreign Plaintiffs' vehicles, which are the  
10 physical evidence at the heart of this litigation, particularly for those Foreign Plaintiffs  
11 who allege UA, are similarly located abroad.

12 Such evidentiary materials could only be obtained by time-consuming letters  
13 rogatory or Hague Evidence Convention procedures at best, and might not be  
14 obtainable at all from countries such as South Africa, Australia, and Turkey, which  
15 will not execute letters of request for pretrial production of documents in their  
16 jurisdictions. Gauntlett Decl. ¶37; Blanden Decl. ¶ 66; Ozunay Decl. ¶ 82. Even to  
17 the extent that any evidence relating to Foreign Plaintiffs' complaints exists in the  
18 United States and is in the control of the parties, as long as the evidence in the foreign  
19 alternative forum is not as accessible, this private factor weighs in favor of dismissal.<sup>5</sup>  
20 *Lueck*, 236 F.3d at 1146.

#### 21 4. Unwilling Witnesses Cannot Be Compelled to Testify

22 Based on the allegations in the complaint and the fact sheets provided to date, it  
23 appears that all of the witnesses to Foreign Plaintiffs' UA events are foreign citizens  
24

25 <sup>4</sup> As stated above, the sole exception, Paul Banton, purchased his vehicle from a  
26 United States dealership, but drives and maintains it in Jamaica.

27 <sup>5</sup> Indeed, the United States Code provides a mechanism under which parties to a  
28 foreign court may apply directly to a United States court seeking Fed. R. Civ. P.  
production of evidence found in the United States for use in that foreign tribunal. 28  
U.S.C. § 1782.

1 and residents. Similarly, dealerships that sold and/or maintained the Foreign  
2 Plaintiffs' vehicles, as well as non-party entities that manufactured the Foreign  
3 Plaintiffs' vehicles, are located abroad. These witnesses are outside of the subpoena  
4 power of the court, and cannot be brought to trial, which weighs in favor of dismissal.  
5 *See Thomson*, 545 F.3d at 366; *In re Taiwan Straits Air Crash*, 331 F. Supp. 2d at  
6 1197-98; *see also* Patajo Kapunan Decl. ¶ 72 (noting that the Philippines is not a  
7 signatory to the Hague Convention and that U.S. courts would not be able to order a  
8 witness residing in the Philippines to testify in the U.S.); Serna de la Garza Decl. ¶ 59  
9 (noting that it can be difficult, if not impossible, to obtain evidence from individuals  
10 residing in Mexico even though Mexico is a signatory of the Hague Convention on the  
11 Taking of Evidence Abroad in Civil and Commercial Matters).

12           5. There Will Be Significant Costs in Bringing Witnesses to Trial

13           In their responses to the fact sheets ordered by this Court, Foreign Plaintiffs  
14 have not identified a single witness who is present in the United States. Even  
15 assuming for the sake of argument that there were witnesses in the United States,  
16 however, witnesses to the manufacture, sale, and/or maintenance of the Foreign  
17 Plaintiffs' vehicles are scattered across six continents where plaintiffs purchased and  
18 maintained their cars. The costs of bringing to trial: (1) any voluntary witnesses from  
19 these multiple countries and continents; (2) expert witnesses in damages issues such  
20 as alleged diminishment in value of Toyotas in thirteen foreign markets; and (3)  
21 translators, weigh in favor of letting these cases be decided in the countries where  
22 Foreign Plaintiffs reside. *In re Taiwan Straits Air Crash*, 331 F. Supp. 2d at 1200.

23           6. Trial Will Be Easier and More Expeditious in Foreign Plaintiffs'  
24 Home Forums

25           In order to hold a trial encompassing Foreign Plaintiffs' claims, the parties  
26 would need to request third party documents regarding the sale and manufacture of  
27 Foreign Plaintiffs' vehicles. Even assuming that such documents were available  
28 pursuant to Hague Evidence Convention or letters rogatory procedures, this Court's

1 resolution of the action would necessarily be delayed until such discovery could be  
2 requested and obtained.

3 In addition, language issues affect which forums would have an easier or more  
4 expeditious trial. *Huang*, 2010 WL 2143669, at \*7. To the limited extent that Foreign  
5 Plaintiffs have provided any documents in response to this Court's order requiring fact  
6 sheet responses, such documents are in the language of the plaintiffs' country, not in  
7 English. In addition, even if third party documents regarding the manufacture or sale  
8 of Foreign Plaintiffs' automobiles could be produced in the United States after third  
9 party procedures, the trial would inevitably be delayed by the incredibly costly and  
10 time-consuming process of translating such documents from more than a dozen  
11 languages such as Afrikaans, Arabic, Chinese, French, German, Indonesian,  
12 Malaysian, Portuguese, Russian, Spanish, Tagalog, Thai and Turkish.

13 Finally, the Ninth Circuit has also held that an expeditious trial is advanced by  
14 the "ability to join third party defendants who otherwise would lie beyond the U.S.  
15 court's jurisdiction." *Contact Lumber*, 918 F.2d at 1451-52. Foreign Plaintiffs have  
16 pointedly avoided naming as defendants a host of entities that are not subject to  
17 jurisdiction in the United States that manufactured, distributed, sold or maintained  
18 Foreign Plaintiffs' automobiles. Trial would be far more expeditious and certain if it  
19 could actually proceed against defendants with some connection to Foreign Plaintiffs'  
20 vehicles and asserted claims.

21 **B. Public Interest Factors Also Weigh Heavily in Favor of the Foreign**  
22 **Forums**

23 1. Plaintiffs' Own Countries Have the Greatest Interest in the  
24 Lawsuit

25 Because there is a "'local interest in having localized controversies decided at  
26 home,'" courts look to the residencies of the plaintiffs and the places of the alleged  
27 injuries in determining which jurisdiction has the greatest interest in resolving the  
28 matters at issue in the litigation. *Piper Aircraft*, 454 U.S. at 260 (quoting *Gilbert*, 330



1 U.S. at 509); *see also Lueck*, 236 F.3d at 1147 (affirming dismissal and holding that  
2 the foreign jurisdiction had “extremely high” interest in litigation with only foreign  
3 plaintiffs). Indeed, in *Piper Aircraft*, the court held that Scotland had a “very strong  
4 interest” in litigation where the accident occurred in Scotland, all decedents were  
5 Scottish, and all potential plaintiffs were Scottish or English. 454 U.S. at 260. Even  
6 though the plane in that litigation was manufactured in the United States, the Supreme  
7 Court held that this factor could not outweigh Scottish interest in the litigation. *Id.*

8 The *Thomson* case is also instructive for this factor, because the Sixth Circuit  
9 held that South Africa had a strong interest in “hearing a case regarding the safety of a  
10 [Toyota] marketed, sold, and used in” South Africa that outweighed the United States’  
11 interests in the litigation even where plaintiffs were United States citizens. 545 F.3d  
12 at 366. The basis for this rationale is particularly demonstrated by: (1) named plaintiff  
13 Ms. Komorova’s pending litigation in Russia and her communication with the Russian  
14 “State traffic inspectorate”; (2) named plaintiff Ms. Yigit’s alleged UA incident and  
15 collision involving a Toyota model which is not manufactured or sold in the U.S.; and  
16 (3) other named plaintiffs who allege UA incidents in their own countries.

17 In the ACFPC, there are only Foreign Plaintiffs present, and their own  
18 allegations demonstrate that their vehicles were manufactured, marketed, sold, and/or  
19 used abroad. Simply put, the countries in which Foreign Plaintiffs reside have the  
20 strongest interest in hearing their claims -- particularly where those claims regard the  
21 safety of vehicles used in those countries -- and the United States does not even  
22 possess the potentially attenuating but unavailing interests that were present in *Piper*  
23 *Aircraft*, *Lueck*, and *Thomson*.

24 2. Foreign Plaintiffs’ Own Courts Are Most Familiar With Their  
25 Own Laws, Which Will Apply to Foreign Plaintiffs’ Claims

26 As was explained in detail in the Foreign Jurisdictional Issues Motion (and as is  
27 demonstrated by Exhibit A submitted with that motion), Foreign Plaintiffs’ ACFPC is  
28 a wholesale cut and paste job of the domestic economic loss plaintiffs’ complaint filed

1 on October 27, 2010. Dkt. No. 663-1, pp. 3-5; Dkt. No. 664-1, 664-2 and 664-3..  
2 However, there is one very notable section of the domestic plaintiffs' complaint that  
3 Foreign Plaintiffs chose to omit from their iteration of the complaint: the domestic  
4 plaintiffs' allegations that California law applied to the claims at issue. Dkt. No. 664-  
5 2, pp. 96-100. While Foreign Plaintiffs have still mimicked the domestic plaintiffs by  
6 pleading their claims under California law, they have undercut this pleading by their  
7 failure to assert what connection, if any, California law (or any United States law)  
8 could conceivably have to their claims.

9 This Court need not make a dispositive choice of law analysis at this stage of  
10 the litigation, but where it appears likely that the laws of plaintiffs' foreign forums  
11 will govern their claims, the burden that likely faces this court in applying foreign  
12 laws is a public factor weighing in favor of dismissal of foreign plaintiffs' claims.<sup>6</sup>  
13 *Lueck*, 236 F.3d at 1148 n.6; *In re Mid-Atlantic Air Crash*, -- F. Supp. 2d --, 2010 WL  
14 3910354 at \*10; *In re Taiwan Straits Air Crash*, 331 F. Supp. 2d at 1211.

15 3. This Case Would Impose a Burden on Local Courts and  
16 Factfinders

17 "Jury duty is a burden that ought not to be imposed upon the people of a  
18 community which has no relation to the litigation." *Gilbert*, 330 U.S. at 508-09. This  
19 is a complicated class action where forty-one plaintiffs -- all of them foreign -- from  
20 thirteen countries have asserted claims relating to their vehicles outside the United  
21 States. Californian factfinders (a jury panel for some of the causes of action, and this  
22 Court for causes of action that may not be heard by a jury) would be required to:

23 a) hear testimony from the Foreign Plaintiffs and from any additional witnesses  
24 available in the United States;

25  
26  
27 <sup>6</sup> In the unlikely event that any portion of Foreign Plaintiffs' claims survive the  
28 Foreign Jurisdictional Issues Motion and this *forum non conveniens* motion, the  
Toyota Defendants will separately and fully brief choice of law issues for remaining  
countries.

1 b) hear testimony and weigh reports from expert witnesses regarding the  
2 comparative resale values of vehicles in each of thirteen foreign countries -- including  
3 values of vehicles manufactured by Toyota and other automakers that are not even  
4 sold in the United States;

5 c) weigh the extent to which differences in Foreign Plaintiffs' vehicle design  
6 and manufacture (e.g., left-hand drive versus right-hand drive, the prevalence of  
7 vehicles with manual transmissions, and differing manufacturing standards and  
8 decisions by region or country) affect their claims;

9 d) review translated documents from each of the Foreign Plaintiffs'  
10 jurisdictions and potentially from additional foreign jurisdictions; and

11 e) apply the respective Foreign Plaintiffs' country's facts to the laws in each of  
12 the Foreign Plaintiffs' forums.

13 Consequently, the excessive burden this case would place on this Court and a jury is  
14 unwarranted. *Piper Aircraft*, 454 U.S. at 261 (noting that "the American interest in  
15 this accident is simply not sufficient to justify the enormous commitment of judicial  
16 time and resources that would inevitably be required if the case were to be tried  
17 here."); *Nolan v. Boeing Co.*, 919 F.2d 1058 (5th Cir. 1990) (affirming the lower court  
18 ruling that none of more than 100 plaintiffs was a U.S. citizen, that the law of one  
19 foreign jurisdiction, England, would likely govern the litigation, and since a trial could  
20 last for months and the controversy did not involve the state, "such onerous jury duty  
21 should not be imposed on the citizens" of that state.)

22 4. Court Congestion Weighs in Favor of Trial Abroad in Each of  
23 Foreign Plaintiffs' Forums

24 Court congestion is not a determinative factor, and the real issue for such an  
25 inquiry is "not whether a dismissal will reduce a court's congestion but whether a trial  
26 may be speedier in another court" *Vorbiev*, 2009 WL 1765675, at \* 5; *Dabbous*,  
27 2009 WL 1403930, at \*8 (noting statistical estimates of court congestion in Egypt  
28 submitted by plaintiff and finding that dismissal on grounds of forum non conveniens

1 was nonetheless proper where evidence was contradicted by statistics provided by  
2 defendants, and where this single factor was insufficient to outweigh the other facts  
3 showing that Egypt had superior interest in deciding dispute locally).

4 In this particular litigation, as argued above, the tremendous task of assembling  
5 and translating evidence from more than thirteen forums will greatly expand the time  
6 necessary to proceed with this case in the United States. Moreover, the foreign forums  
7 are efficient and capable of reaching a decision on Foreign Plaintiffs' claims in a  
8 timely fashion. *See, e.g., Umar Decl.* ¶ 63 (noting that in general, an Indonesian court  
9 will render a judgment within approximately six (6) months from the commencement  
10 of an action); *Choy Choong Decl.* ¶ 24 (noting that Malaysian judiciary has recently  
11 taken steps to increase efficiency in legal system). This factor also weighs in favor of  
12 dismissal of this litigation.

13 5. This Costly Litigation Is Unrelated to This Forum

14 As the Toyota Defendants have already argued in the Foreign Jurisdictional  
15 Issues Motion, Foreign Plaintiffs' claims have no relation whatsoever to the named  
16 defendants and must be dismissed. Even if any portion of the ACFPC remains  
17 however, there is no relation between Foreign Plaintiffs' claims and the United States,  
18 particularly in light of: a) Foreign Plaintiffs' express removal of paragraphs from their  
19 model domestic plaintiffs' complaint linking their claims to California; b) Foreign  
20 Plaintiffs' own ACFPC admission that U.S. Toyota Defendants took different actions  
21 regarding U.S. vehicles than did Toyota Motor Europe; and c) Foreign Plaintiffs' own  
22 complaint allegations and fact sheets demonstrating contacts with their own countries  
23 rather than the United States. *Dkt. No. 664-2, pp. 96-100; ACFPC* ¶¶ 220, 334;  
24 *Gilford Decl. Exhs. C, D, F, G.*

25 U.S. citizens would be unnecessarily burdened if this case proceeds in the  
26 United States, since Foreign Plaintiffs' claims have no relation to conduct or events  
27 occurring in the U.S. *See, e.g., Lueck*, 236 F.3d at 1147 (affirming holding that where  
28 accident and its aftermath occurred in New Zealand, and local interest in dispute was





1 Dated: February 23, 2011

2 By: /s/ Anna S. McLean

3 ANNA S. McLEAN (CA SBN 142233)  
4 Email: amclean@sheppardmullin.com  
5 **SHEPPARD, MULLIN, RICHTER**  
6 **& HAMPTON LLP**

7 Four Embarcadero Center, 17<sup>th</sup> Floor  
8 San Francisco, CA 94111  
9 Telephone: (415) 434-9100  
10 Facsimile: (415) 434-3947

11 ASHLEY E. MERLO (CA SBN 247997)  
12 Email: amerlo@sheppardmullin.com  
13 **SHEPPARD, MULLIN, RICHTER**  
14 **& HAMPTON LLP**

15 650 Town Center Drive, 4th Floor  
16 Costa Mesa, CA 92626-1993  
17 Telephone: (714) 513-5100  
18 Facsimile: (714) 513-5130

19 *Attorneys for Toyota Motor Credit Corporation*